IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.284 OF 2005

Abdul Salam Mohd.Yusuf Kazi ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Ms.Anjali Patil Contractor for Applicant.

Mr.D.R.More, A.P.P. for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 4, 2005.

P.C.

1. Heard Counsel for the parties. Perused the proceedings.

2. This is second Application for bail preferred by the present Applicant. His earlier Bail Application was rejected by me on 6th October 2004, mainly on the ground that the relevant fact that the Applicant was involved in similar offence

being C.R.No.242 of 2002 was not disclosed in the Application. It is now pointed out that the said case has ended in acquittal of the Applicant. Copy of the Judgment passed in favour of the Applicant by the Sessions Court dated 15th December 2004 is placed on record. This position is accepted by the learned A.P.P. If it is so, indeed, it is a changed circumstance and the present Application can be considered on its own merits.

3. As I mentioned earlier, the first Application was rejected by me solely on the ground that no disclosure about pending criminal case was made and I did not advert to the merits at all. Accordingly, in this Application, I think it necessary to go into the merits of the case.

4. The Applicant is named in connection with offence registered with Versova Police Station being C.R.No.222/03 punishable under Section 302, 120-B, 427, etc. of the Indian Penal Code. The role of the Applicant is stated to be co-ordinating the commission of the crime and therefore, involved in the conspiracy. To rope in the Applicant,

prosecution essentially relies on three circumstances. The first circumstance is that a sim card was recovered from the Applicant and the information which became available from the service provider is that the Applicant had made several calls to Dubai. The second circumstance is that the Applicant had visited the office of the deceased about eight or ten days before the incident took place. The third circumstance is that the Applicant had made one call from S.T.D. Booth to Dubai.

5. Even taking all these circumstances together, or singularly, to my mind, no case is made out by the prosecution to deny the relief of bail to the Applicant. I say so because insofar as circumstance regarding recovery of sim card is concerned, learned A.P.P., fairly accepts on instructions that there is nothing on record to suggest that necessary enquiries have been made to find out whether the calls made by the Applicant from the said sim card can connect him to any underworld people or associates of the co-accused. Similar is the position with regard to the

circumstance of making phone call to Dubai from the S.T.D. Booth. No investigation has been made to trace whether the call was made to the relative of the Applicant as stated on affidavit on behalf of the Applicant or otherwise.

6. In other words, only one circumstance that remains to be considered is visit of the Applicant eight or ten days before the date of incident. There is nothing to show from the record that on visit of the Applicant, any threat was administered by him or that deceased was disturbed or any scene was created in the office. If it is so, that circumstance does not take the matter any further. Besides, it is seen that investigation is complete, charge-sheet has been filed, and the co-accused who allegedly were assailants, have already been released on bail.

7. To oppose the bail of the present Applicant, learned A.P.P. submits that the record indicates that the Applicant has been providing misleading information. To support this submission, reliance was placed on the

communication between the Applicant and the passport authorities, to contend that if the Applicant is released on bail, in all probability, he will flee from the ends of justice and not make himself available for the trial. This apprehension, it is submitted on behalf of the Applicant, is misplaced, as the Applicant is permanent resident of Mumbai and is staying along with all his family members in Mumbai. Besides, the Applicant can be put to strict conditions, to which, the Applicant is willing to abide, if released on bail. That would secure the ends of justice. Accordingly, in my opinion, the Applicant is entitled for bail and he is enlarged on bail on the following terms:

(a) The Applicant is enlarged on bail in connection with C.R.No.222/03 registered with Versova Police Station on executing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or two local sureties in the like amount.

(b) The Applicant shall regularly report to the concerned Police Station once a week between

2.00 a.m. to 4.00 p.m. on Saturday, and also attend on all the dates before the Trial Court, without fail.

(c) The Applicant shall not tamper with the prosecution evidence or attempt to influence the prosecution witnesses in any manner whatsoever.

(d) The Applicant shall not leave the jurisdiction of the concerned Police Station, without prior intimation to the Investigating Officer as well as the Trial Court.

(e) The Applicant shall surrender passport to the Investigating Officer before availing of the bail. Applicant’s sister is personally present in Court and assures through her Counsel that the passport will be deposited with the Investigating Officer by tomorrow i.e. 5.2.2005.

(f) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the

opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama, which will be a ground for cancellation of bail.

8. The trial shall be concluded as expeditiously as possible, and if necessary, be referred to Fast Track Court, so as to ensure early disposal of the case, preferably within six months from today.

9. Application disposed of on the above terms.

10. All concerned to act on the ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.